



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2015-0454; FRL-9932-35-Region 3]

**Approval and Promulgation of Air Quality Implementation Plans;
Virginia; Movement of the Northern Virginia Area from Virginia's
Nonattainment Area List to its Maintenance Area List**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking direct final action to approve revisions to the Virginia State Implementation Plan (SIP). The revisions move the localities (Counties of Arlington, Fairfax, Loudon, and Prince William; Cities of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park) of Northern Virginia from Virginia's list of nonattainment areas to its list of maintenance areas for fine particulate matter (PM_{2.5}). EPA is approving these revisions in accordance with the requirements of the Clean Air Act (CAA).

DATES: This rule is effective on **[insert date 60 days after date of publication in the Federal Register]** without further notice, unless EPA receives adverse written comment by **[insert date 30 days after date of publication in the Federal Register]**. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA-R03-OAR-2015-0454 by one of the following methods:

A. www.regulations.gov. Follow the on-line instructions for submitting comments.

B. E-mail: fernandez.cristina@epa.gov

C. Mail: EPA-R03-OAR-2015-0454, Cristina Fernandez, Associate Director, Office of Air Program Planning, Air Protection Division, Mail code 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. Hand Delivery: At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA-R03-OAR-2015-0454. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI, or otherwise protected, through www.regulations.gov or e-mail. The www.regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the www.regulations.gov index.

Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form.

Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: Maria A. Pino, (215) 814-2181, or by e-mail at pino.maria@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Particle pollution, or particulate matter, is a mixture of solid particles and liquid droplets found in the air. Particle pollution includes "inhalable coarse particles," with diameters larger than 2.5 micrometers and smaller than 10 micrometers and "fine particles," with diameters that are 2.5 micrometers and smaller. Due to their small size, these particles often contribute to adverse health effects. EPA is required to set National Ambient Air Quality Standards (NAAQS) under the authority of the CAA, for the purpose of controlling particle pollution. The first NAAQS for PM_{2.5} were established on July 16, 1997 (62 FR 38652). EPA promulgated an annual standard at a level of 15 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$), based on a three-year average of annual mean

PM_{2.5} concentrations (the 1997 annual PM_{2.5} standard). In the same rulemaking action, EPA promulgated a 24-hour standard of 65 µg/m³, based on a three-year average of the 98th percentile of 24-hour concentrations.

EPA published air quality area designations for the 1997 PM_{2.5} standards on January 5, 2005. In its rulemaking action, EPA designated the Washington, DC-MD-VA Area as nonattainment for the 1997 annual PM_{2.5} standard. The Washington, DC-MD-VA area (Washington Area) is composed of the District of Columbia; Arlington, Fairfax, Loudoun, and Prince William Counties and the cities of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park in Virginia (the Northern Virginia area); and Charles, Frederick, Montgomery, and Prince George's Counties in Maryland.

The District of Columbia Department of the Environment (DDOE), the Maryland Department of the Environment (MDE), and the Virginia Department of Environmental Quality (VADEQ), (collectively, the States), collaborated to develop redesignation requests and maintenance plans for the Washington Area for the 1997 annual PM_{2.5} NAAQS. EPA received the 1997 annual PM_{2.5} redesignation requests and maintenance plans for the Washington Area from DDOE on June 3, 2013, from MDE on July 10, 2013, and from VADEQ on June 3, 2013. The Washington Area maintenance plan included motor vehicle emissions budgets (MVEBs) for PM_{2.5} and nitrogen oxides (NO_x) for the Washington Area for the 1997 annual PM_{2.5} standard, which EPA approved for transportation conformity purposes. The emissions inventories included in the Washington Area maintenance plans were subsequently supplemented by the States to provide for emissions estimates of volatile organic compounds (VOC) and ammonia. The supplemental

inventories were submitted to EPA on July 22, 2013 by DDOE, on July 26, 2013 by MDE, and on July 17, 2013 by VADEQ.

On October 6, 2014 (79 FR 60081), the EPA approved the States' redesignation requests and maintenance plans for the Washington Area, including Northern Virginia, for the 1997 annual PM_{2.5} standard. Therefore, the designation of the Northern Virginia area, as part of the Washington Area, was changed from nonattainment to attainment. Subsequently, Virginia changed its lists of areas in nonattainment and maintenance within its regulations, located in 9 VAC5 Chapter 20, to reflect EPA's redesignation of the Washington Area.

II. Summary of SIP Revision

On June 1, 2015, the Commonwealth of Virginia submitted a formal revision to its SIP. The SIP revision consists of a regulatory change that moves the Northern Virginia area (Counties of Arlington, Fairfax, Loudoun, and Prince William; Cities of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park), which was part of the Washington Area, from the list of nonattainment areas found in regulation 9 VAC 5–20–204 to the list of maintenance areas found in regulation 9 VAC 5–20–203.

III. General Information Pertaining to SIP Submittals from the Commonwealth of Virginia

In 1995, Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) “privilege” for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed.

Virginia's legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations. Virginia's Voluntary Environmental Assessment Privilege Law, Va. Code Sec. 10.1-1198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The Privilege Law does not extend to documents or information that: (1) Are generated or developed before the commencement of a voluntary environmental assessment; (2) are prepared independently of the assessment process; (3) demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) are required by law.

On January 12, 1998, the Commonwealth of Virginia Office of the Attorney General provided a legal opinion that states that the Privilege Law, Va. Code § 10.1-1198, precludes granting a privilege to documents and information "required by law," including documents and information "required by Federal law to maintain program delegation, authorization or approval," since Virginia must "enforce Federally authorized environmental programs in a manner that is no less stringent than their Federal counterparts. . . ." The opinion concludes that "[r]egarding § 10.1-1198, therefore, documents or other information needed for civil or criminal enforcement under one of these programs could not be privileged because such documents and information are essential to pursuing enforcement in a manner required by Federal law to maintain program delegation, authorization or approval." Virginia's Immunity law, Va. Code Sec. 10.1-1199, provides that "[t]o the extent consistent with requirements imposed by Federal law," any person making a voluntary disclosure of information to a state agency regarding a violation of an

environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The Attorney General's January 12, 1998 opinion states that the quoted language renders this statute inapplicable to enforcement of any Federally authorized programs, since “no immunity could be afforded from administrative, civil, or criminal penalties because granting such immunity would not be consistent with Federal law, which is one of the criteria for immunity.”

Therefore, EPA has determined that Virginia’s Privilege and Immunity statutes will not preclude the Commonwealth from enforcing its program consistent with the Federal requirements. In any event, because EPA has also determined that a state audit privilege and immunity law can affect only state enforcement and cannot have any impact on Federal enforcement authorities, EPA may at any time invoke its authority under the CAA, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the CAA is likewise unaffected by this, or any, state audit privilege or immunity law.

IV. Final Action

EPA is approving the proposed regulatory amendment which moves the localities in Northern Virginia (Counties of Arlington, Fairfax, Loudoun, and Prince William; Cities of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park) from the list of nonattainment areas found in regulation 9 VAC 5–20–204 to the list of maintenance areas found in regulation 9 VAC 5–20–203. EPA finds this revision to the SIP is in accordance with CAA requirements, including sections 107 and 110 of the CAA.

EPA is publishing this rule without prior proposal because EPA views this as a noncontroversial amendment and anticipates no adverse comment. However, in the “Proposed Rules” section of today’s **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on **[insert date 60 days after date of publication in the Federal Register]** without further notice unless EPA receives adverse comment by **[insert date 30 days after date of publication in the Federal Register]**. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

V. Incorporation by Reference

In this rulemaking action, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of changes to 9 VAC5 Chapter 20, specifically 9VAC5-20-203 and 9VAC5-20-204, described in the amendments to 40 CFR part 52 set forth below. The EPA has made, and will continue to make, these documents generally available electronically through www.regulations.gov and/or in hard copy at the appropriate EPA office (See the ADDRESSES section of this preamble for more information).

VI. Statutory and Executive Order Reviews

A. General Requirements

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP revision applies to Northern Virginia and does not apply in Indian country, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[Insert date 60 days from date of publication of this document in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking action. This action, which moves the localities in Northern Virginia within the Washington Area (Counties of Arlington, Fairfax, Loudoun, and Prince William; Cities of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park) from the list of nonattainment areas found in regulation 9 VAC 5–20–204 to the list of maintenance areas found in regulation 9 VAC 5–20–203, may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter.

Dated: August 4, 2015.

William C. Early, Acting
Regional Administrator,
Region III.

40 CFR part 52 is amended as follows:

PART 52 – APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart VV—Virginia

2. In § 52.2420, the table in paragraph (c) is amended by revising the entries for Sections 5-20-203 and 5-20-204. The revised text reads as follows:

§ 52.2420 Identification of plan.

* * * *

(c) * * *

EPA-Approved Virginia Regulations and Statutes

State citation	Title/subject	State effective date	EPA approval date	Explanation [former SIP citation]
* * * *	* * *			
9 VAC 5, Chapter 20	General Provisions			
* * * *	* * *			
Part II	Air Quality Programs			
* * * *	* * *			
5-20-203	Air Quality Maintenance Areas	3/11/15	[Insert date of Federal Register publication date] [Insert Federal Register	List of maintenance areas revised to include Northern Virginia localities for fine particulate matter (PM _{2.5}).

State citation	Title/subject	State effective date	EPA approval date	Explanation [former SIP citation]
			<u>Citation]</u>	
5-20-204	Nonattainment Areas	3/11/15	[<u>Insert date of Federal Register publication date]</u> [<u>Insert Federal Register Citation]</u>	List of nonattainment areas revised to exclude Northern Virginia localities for fine particulate matter (PM _{2.5}).
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[FR Doc. 2015-20023 Filed: 8/13/2015 08:45 am; Publication Date: 8/14/2015]